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18 DIGITAL REALTY TRUST, INC. and ELLEN JACOBS

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL SOMERS, an individual,

Case No. 3:14-cv-05180 EMC (KAW)

Plaintiff,

**DECLARATION OF SAM LEE IN
SUPPORT OF DEFENDANTS DIGITAL
REALTY TRUST, INC. AND ELLEN
JACOBS', RESPECTIVELY, MOTION
FOR SUMMARY JUDGMENT, OR IN
THE ALTERNATIVE, SUMMARY
ADJUDICATION; MEMORANDUM OF
POINTS AND AUTHORITIES**

v.

DIGITAL REALTY TRUST, INC., a Maryland
corporation; ELLEN JACOBS, an individual, and
DOES ONE through TEN, inclusive,

Defendants.

[Fed. R. Civ. P. 56]

Date: August 2, 2018

Time: 1:30 p.m.

Place: San Francisco Courtroom 5
17th Floor

1 I, SAM LEE, hereby declared state:

2 1. From 2013 until 2017, I was a Director of Asset Management in the Asia Pacific
 3 (“APAC”) Region of Digital Realty Trust (“DRT” or the “company”) based at its Singapore office. I
 4 have personal knowledge of the matters set forth herein and, if called upon to do so, could and would
 5 competently testify to them.

6 2. Throughout my employment at DRT, I was subordinate to and worked for Paul Somers
 7 until his termination from the company. I always knew that Mr. Somers was gay because he told me
 8 that he was and that he had a partner named Raul. I enjoyed working for Mr. Somers initially. He
 9 seemed to be amiable and interested in my work. As the size of the APAC Region’s workforce grew,
 10 however, I observed a change in his behavior that made it very difficult for me to work with him
 11 productively. I describe some of those unfortunate issues below.

12 3. In February 2014, I was preparing a self-evaluation. This is an internal process that
 13 required me to fill out a form describing my work and performance for the prior calendar year. As I
 14 understood it, the form would be used by management in Singapore to assess my performance and
 15 would ultimately determine my bonus and 2014 pay increment, so it was an important document for me
 16 personally.

17 4. I emailed a draft of my self-evaluation to Mr. Somers for his review before I finalized the
 18 document. On or about February 11, 2014, I received an email response from Mr. Somers about my
 19 self-evaluation. In his email, Mr. Somers made several redlined suggestions to my draft. One of them
 20 was to add the following language: "I was assigned the Osaka project as the Asset Manager but **my role**
 21 **was ended at the decision of the SVP without explanation.**" (Emphasis added.) Attached hereto as
 22 Exhibit 14 is a true correct copy of Mr. Somers' email to me that I received on February 11, 2014 and
 23 Exhibit 15 which is the redlined draft of the self-evaluation that he attached to that email. At the top of
 24 Exhibit 14 there is an email from me to Sarah Schubert dated March 12, 2018. Mr. Somers' email to me
 25 is below the email from me to Ms. Schubert on Exhibit 14.

26 5. I was extremely concerned about the edit that Mr. Somers suggested in the quote in
 27 Paragraph 4, above. It appeared to me that Mr. Somers was trying to enlist me in a direct attack on Kris
 28 Kumar, who was the “SVP” mentioned in the quoted language. Mr. Kumar was the Senior Vice

1 President in APAC and was head of the entire Region for DRT. Mr. Kumar was Mr. Somers' immediate
 2 boss, so he was my boss' boss. In addition, I did not agree with what Mr. Somers was adding to my self-
 3 evaluation in this quote was accurate. Mr. Kumar did not take the Osaka project away from me. The
 4 fact that Mr. Somers was suggesting that I add this inaccurate statement to my self-evaluation created a
 5 point of principle for me that I wanted to address with Human Resources because I felt that it was not
 6 right. It was also not right in my mind that he wanted to try and influence me in this manner.

7 6. I interpreted Mr. Somers' suggested edit to be hostile to Mr. Kumar and to put him in a
 8 very negative light. I thought that this negative edit was similar with a negative statement that Mr.
 9 Somers had said to me previously about Mr. Kumar. Mr. Somers had spoken with me directly about the
 10 head of DRT worldwide, Mike Foust, leaving the company. Mr. Somers told me words to the effect that
 11 "When Mike Foust leaves Digital, Kris will go too because Mike is Kris' only supporter."

12 7. I had heard from other employees that Mr. Somers said that he was "Waiting for Kris to
 13 leave Digital," or words to that effect. Although I do not know if Mr. Somers said those things to these
 14 employees, they were consistent with the negative comments about Mr. Kumar that he said to me and
 15 what he wrote in my draft self-evaluation, so I considered the statements to be accurate reflections of
 16 Mr. Somers' opinion of Mr. Kumar.

17 8. As a subordinate employee, I did not want anything to do with a personality clash
 18 between Mr. Somers and Mr. Kumar. I believe that Mr. Somers was acting very inappropriately when
 19 he told me that "When Mike Foust leaves Digital, Kris will go too because Mike is Kris's only
 20 supporter." I also thought that Mr. Somers acted extremely inappropriately when he suggested edits to
 21 my self-evaluation that put Mr. Kumar in such a negative light at my expense

22 9. Because of my concerns about the self-evaluation edits suggested by Mr. Somers, on or
 23 about February 11, 2018, I spoke directly with the company's human resources representative in
 24 Singapore to discuss them. That person's name is Sarah Schubert. I told Ms. Schubert that Mr. Somers'
 25 suggested edits placed a lot of pressure on me and I asked her what I should do because I felt so
 26 uncomfortable. She told me words to the effect that I should only write on my self-evaluation what I felt
 27 was right because ultimately it was my review to file with management. She told me further that my
 28 self-evaluation should be a true depiction of my year and my achievements during 2013.

1 10. During my conversation with Ms. Schubert, I told her about Mr. Somers' comments to me
 2 that, "When Mike Foust leaves Digital, Kris will go too because Mike is Kris' only supporter." I told her
 3 that I was uncomfortable with that statement and thought it was inappropriate for Mr. Somers to have
 4 said it to me, or words to that effect. I then told her that I had heard from other employees that Mr.
 5 Somers told them that he was "Waiting for Kris to leave Digital," or words to that effect.

6 11. Several weeks after I spoke with Ms. Schubert about the edit Mr. Somers put on my self-
 7 evaluation, she asked me to send the email and edited document to her. I forwarded it to her via email
 8 on or about March 12, 2014, as reflected on Exhibit 14. Ms. Schubert's request for this document was
 9 made during a meeting she had with me to discuss my experiences with Mr. Somers. I told Ms.
 10 Schubert during this meeting that I had liked working with Mr. Somers but that had changed because I
 11 had noticed a difference in his behavior over the course of the previous year.

12 12. I told Ms. Schubert that Mr. Somers had what I considered to be an aggressively hostile
 13 opinion about working with certain other departments in the APAC Region. For example, in his edits to
 14 my self-evaluation, Mr. Somers told me, "Asset Managers own the asset, we assess the sales teams
 15 proposals and provide approval, denial or ideas to make it work., *[sic]* **We don't work for sales and**
 16 **need to get away from this view in 2014.** Consider writing it from this an owners perspective."
 17 (emphasis added.) I told Ms. Schubert that sometimes Mr. Somers instructed me to not work directly
 18 with nor share any information we had with our DRT colleagues in the Sales and Acquisitions group in
 19 APAC but to instead route my questions and data to him for communication to that group. I also told
 20 Ms. Schubert that Mr. Somers had told me directly to keep things secret from Mr. Kumar.

21 13. I also told Ms. Schubert that Mr. Somers hostility towards other departments affected my
 22 ability to do my job well because I was sometimes cut off from working with my colleagues, delayed in
 23 my work and then felt unfairly pressured on my deadlines, which I thought was totally avoidable. I told
 24 her that I had built relationships with the local Sales Directors and Technical Operations teams working
 25 for the Sales and Acquisitions group and just wanted to work with them to get the job done.

26 14. I also told Ms. Schubert that I was concerned about Mr. Somers' demeanor at the office.
 27 I said that he had previously been amiable and interested in my work, but that his more recent behavior
 28 was very different. I told Ms. Schubert that I sometimes found Mr. Somers' instructions to me to be

1 incoherent or inconsistent. I said, for example, that he would ask me to perform one task, and then
2 change his mind after I started in on the project and have me redo my work. There were multiple
3 instances of this. However one example would be in terms of the renovation project for the Singapore
4 HQ office. From my perspective, Mr. Somers would consistently change his mind on design elements,
5 costs, furniture, etc., for the Singapore HQ office construction. I felt like I was left with dealing with
6 frustrated contractors and designers who would get multiple sets of instructions from him which would
7 continually contradict each other. I was interfacing with one of the contractors on this project, a
8 company called HBO, and they came to a point where they threatened to sue DRT because they told me
9 that Mr. Somers had caused them to engage in multiple different designs, provide instructions, then he
10 would deny that he ever instructed them in the first place. I understand from my interaction with HBO
11 that they were upset with the company because they thought that Mr. Somers was not willing to pay
12 them for their design services which were required to address his requests for changes.

13 15. In my work at DRT during 2013 and 2014, I continued to be directly involved in the
14 gating approval process with projects in APAC region. I understand that Mr. Somers claims that he was
15 cut out of the gating approval process starting in 2013 and continuing until his last day of work. I can
16 testify that I performed that work for the Portfolio/Asset Management group consistently during this
17 time period, so the gating approval work on my desk was certainly getting done even if Mr. Somers was
18 not doing gating approval work.

19 I declare under penalty of perjury under the laws of the United States of America that I have read
20 this declaration and that it is true and correct.

21 Executed June 13, 2018 at Singapore.

23

Sam Lee

EXHIBIT 14

Message

From: Sam Lee [/O=DLR/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=SAM LEE375]
Sent: 3/12/2014 3:19:42 AM
To: Sarah Schubert [sschubert@digitalrealty.com]
Subject: FW: Document1 [Compatibility Mode]
Attachments: Document1 [Compatibility Mode].docx

Hi Sarah,

Got your VM...here is the email and attachment.

My original comments in SF was the black text and Paul's comments in blue.

Let me know if you want to discuss?

Thanks,

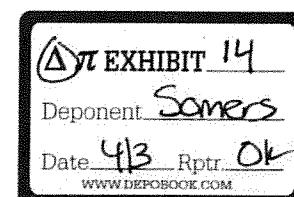
Sam

From: Paul Somers
Sent: Tuesday, February 11, 2014 12:25 AM
To: Sam Lee
Subject: Document1 [Compatibility Mode]

Sam,

After reviewing your goals, I have attached some suggested changes. Read though and make the changes in Success Factors or let me know if you want to discuss anything specific and we can arrange a call. You are the last to be submitted so please turn this around as quickly as possible. Also, do a spell check!

Paul



(-7 hours behind Singapore)

EXHIBIT 15

1.3

Organized 8 informal drinks/coffee sessions with sales, acquisitions, D&C and/or delivery to better understand DLR, the industry and/or areas for ~~improvement where Asset can assist each respective group, where more collaboration is needed to help Portfolio to deliver on the assets required returns.~~

I have had bi-weekly discussions with sales engineering to understand technical issues with leases, KPI's and other technical sales related ~~queries~~queries.

1.4

To date I have had full participation and provided assistance in attending Greenmark-related meetings. The discussions around the certification are being led by Tech_Ops and while I do have influence, I may not necessarily have control of this initiative. Currently postponed till Q1 2014. Sam, you own the asset, you are in control. Please rephrase this.

I have spent at least 1 hour a week to follow-up on industry news, internal newsletters and other collaterals in the DLR website to improve my knowledge of the industry.

2.1 New organization structure presentation for the SIN10 Property team has been provided to management and approved by Paul Somers. It has also been discussed and shared with the Property team pending official roll-out. Due to a delay in the decision and timing of the the Snr. Real Estate role, the decision was made to roll-out in Jan roll out what? 2014 instead and ensure we're starting on a clean slate. [consider rewriting this entire commentary.]

2.2

No acquisitions occurred in 2013. I was assigned the Osaka project as the Asset Manager but my role was ended at the decision of the SVP without explanation.

2.4

I feel this has been one of my strongest accomplishments~~?~~ to date. With minimal direction, training or handover when I began the role,~~-~~do you want to say this? I have taken ownership of the IA's and have made it a personal commitment to make sure I understand the IA process intimately from top to bottom. [This is something I would expect from Pips goals]

I have addressed all IA requests and have always been responsive to all of sales' needs to review deals. I have attended all lease discussions (Tata, Julius Baer, Covance, ServiceNow) and meetings/calls where critical decisions needed to be made. [Think of this in context of the Lease Proposal Approval Process. Asset Managers own the asset, we assess the sales teams proposals and provide approval, denial or ideas to make it work., We don't work for sales and need to get away from this view in 2014. Consider writing it from this an owners perspective]

2.7

All minor improvements have been completed.

Major improvements such as reception upgrades, gantry rust removal, etc have either not been completed due to time constraints or have been taken out of the budget for OpEx savings. [Sam this sounds a bit careless which is not what you meant – you may want to indicate that the asset is not in jeopardy]

2.8

Completed and distributed during the Project Harmony kick off. Have taken lead role for APAC in coordinating completion of Matrix across the portfolio in APAC. [taken the lead role which means AC and I are no longer heading up the project?]

2.9

~~Compiled all APAC property reports and created an OpEx comparison report. First draft successfully completed and awaiting feedback on next steps.~~

~~Spent significant amount of time to compile, analyze, modify and present data in a format that presents well and is concise.~~

As one of the ideas that came out of our 2013 Off Site I compiled, analyzed, and presented data in a format that presents well and is concise. The finished product is to be included as a part of the Portfolio Results binder for 2013 and expanded on for 2014.

4.2

Establish effective working relationship with Sales Director & Sales VP to get feedback on the pulse of the deals in the works as well as general market indicators. Attending weekly sales meetings has allowed better visibility to this. [how is teamwork with sales? Chance to comment]

Worked with Marketing to come up with a marketing campaign on our electricity savings initiative this identified areas where we could improve our communications/messaging to the market.

Knowledge and understanding of our product offerings and value propositions has drastically improved via reading daily news stories in sharepoint and subscribing to DLR's social media and news feeds.

Sam at your level you do not need to do Role Specific Competencies. I would like to review with you these items though. Please delete but save a copy for us to discuss

4.3 deferrals not resulting in operational deficiencies [Sam, you may want to leave this entire section out]

I feel one of my strongest qualities is the fact that I work with a simple goal in mind to be upfront, honest, work hard and ensure I exceed what is expected of me. I am confident that my counterparts across

departments and in the region will say that i have been a good team player and have been able to build a very good rapport with them.

My goal is to ensure excellence through-getting different individuals and groups to work better with each other, resolve conflicts and innovate together. So far i feel i have been able to achieve that with Sales, Accounting and TechOps.

Since I came into the role, i have had minimal training or guidance on how to do my role. It has required me to be resourceful, take initiative on my own and a lot of hard work/dedication to get to a point where I feel i have done a successful job at meeting what is expected of me relatively quickly given I joined the company in end-Apr 2013 Ouch!